

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SAFE HAVEN HOME CARE, INC.,)	
EVERGREEN HOMECARE SERVICE)	
OF NY INC., ELIM HOME CARE)	
AGENCY, LLC, DHCARE)	Civil Action No.:
HOMEHEALTH, INC., SILVER LINING)	
HOMECARE AGENCY, AND ANGEL)	
CARE, INC.)	
Plaintiffs,)	
v.)	
)	
UNITED STATES DEPARTMENT OF)	
HEALTH AND HUMAN SERVICES,)	
XAVIER BECERRA, in his official)	
capacity as Secretary of the United States)	
Department of Health and Human Services,)	
UNITED STATES CENTERS FOR)	
MEDICARE & MEDICAID SERVICES,)	
CHIQUITA BROOKS-LASURE, in her)	
official capacity as Administrator of the)	
U.S. Centers for Medicare and Medicaid)	
Services, NEW YORK STATE)	
DEPARTMENT OF HEALTH, MARY T.)	
BASSETT, in her official capacity as)	
Commissioner of the New York State)	
Department of Health, BRETT R.)	
FRIEDMAN, in his official capacity as)	
Medicaid Director of the New York State)	
Department of Health)	
Defendants.)	
_____)	

**Declaration of Jacob Joffe in Support of Plaintiffs’ Motion for
Temporary Restraining Order and Preliminary Injunction**

I, Jacob Joffe, hereby declare under penalty of perjury:

1. I am the Chief Executive Officer, Administrator and 100% owner of Silver Lining Homecare Agency, Inc. (“Silver Lining”), a Licensed Home Care Services Agency (“LHCSA”), located at 1115 Avenue U, Brooklyn, New York 11223.

2. Silver Lining was founded as a corporation operating in New York State in October 2012.
3. Silver Lining is licensed by the New York State Department of Health and provides services to Medicaid beneficiaries. Its operating certificate number is 2203L001, which was effective October 13, 2016.
4. As a LHCSA, Silver Lining provides Medicaid-covered personal care services.
5. Silver Lining also participates in the Nursing Home Transition and Diversion Program to enable people to remain in their homes and community.
6. Silver Lining serves the following counties: Bronx, Kings, Nassau, New York, Queens, and Richmond.
7. I am an information system professional with over 20 years of experience in business, solution and application architecture. I presided over a successful IT consulting company for over 17 years, managing day-to-day operations, payroll processing and staffing. I have extensive experience in healthcare and patient care, having designed and implemented various complex solutions to deliver testing results to physicians, as well as directly to patients, while complying with rigorous regulatory requirements and regulations.
8. Silver Lining's multicultural employees are able to serve a multicultural and diverse community. Staff members speak Ukrainian, Polish, Russian, Hebrew, Yiddish, Uzbek, Tajik, Farsi, Armenian and Creole.
9. Silver Lining is well-known in the community for working closely with Holocaust survivors and refugees/immigrants from the former USSR and Eastern Europe.

10. Silver Lining works closely with nonprofit and religious organizations, like SelfHelp Community Services, Bikur Cholim, and Jewish Community Council of Greater Coney Island (JCCGCI).
11. Silver Lining services approximately 600 clients.
12. Silver Lining currently employs approximately 720 direct care workers on a weekly basis.
13. As a smaller-sized LHCSA, Silver Lining is able to provide more customized and personalized care to meet the client's needs. For example, a client of Ukrainian background may ask that the direct care worker not be Russian. Silver Lining is able to listen to these specific needs and address them in a timely and sensitive fashion.
14. Staffing for LHCSAs, including Silver Lining, is stretched thin already because of (1) employees leaving the workforce due to COVID-19, and (2) others leaving the workforce after the COVID-19 vaccine mandate because they cannot work as direct care workers unless they are fully vaccinated and either choose not to get vaccinated or are not yet fully vaccinated. Therefore, competition is stiff for direct care workers.
15. I hoped that Silver Lining would be eligible for the additional funds under the American Rescue Plan Act of 2021, section 9817 and offered through NYSDOH's Spending Plan Implementing those funds. Specifically, I hoped Silver Lining would be eligible for funds under the Transform the Long-Term Care (LTC) Workforce and Achieve Value-Based Payment (VBP) Readiness proposal, which was to be available to all LHCSAs according to the July 8, 2021 Spending Plan.
16. I understand that New York State's Department of Health is now limiting the Transform the Long-Term Care (LTC) Workforce and Achieve Value-Based Payment (VBP)

Readiness proposal to only the top one-third of LHCSAs based on 2019 managed care revenue.

17. I became aware that other LHCSAs received letters dated on or about December 23, 2021 from the New York State Department of Health, Division of Long Term Care, Office of Health Insurance Programs, notifying the agencies that they are potentially eligible for funding under the Transform the Long-Term Care (LTC) Workforce and Achieve Value-Based Payment (VBP) Readiness investment. The letter asked the LHCSA to complete an online questionnaire before January 14, 2022 and asked the LHCSA to register in advance to attend an informational webinar on January 6, 2022. Silver Lining did not receive one of these letters and was not invited to complete a questionnaire or attend the webinar.
18. Smaller LHCSAs, like Silver Lining, are already disadvantaged because larger LHCSAs have more favorable terms (such as higher rates and Value-Based Payment bonuses) with the Managed Long Term Care Plans. Giving these additional funds to only the top one-third of LHCSAs by 2019 managed care revenue only further disadvantages smaller LHCSAs, including Silver Lining.
19. I understand that the Transform the Long-Term Care (LTC) Workforce and Achieve Value-Based Payment (VBP) Readiness proposal would provide funds so that the eligible LHCSAs raise wages, offer retention and recognition bonuses, offer enhanced job benefits, such as health insurance for part-time and full-time workers, offer signing bonuses to new hires, among other things.
20. The designation of the “provider class” so that only the top one-third of LHCSAs by managed care revenue are eligible for these additional funds under the American Rescue

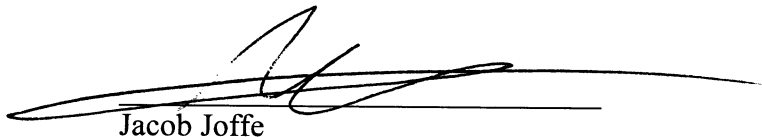
Plan Act of 2021, Section 9817 will cause irreparable harm to Silver Lining for several reasons.

21. Eligible LHCSAs will be able to offer better compensation and benefits packages than Silver Lining could afford to offer because eligible LHCSAs can use the additional funds to offer bonuses, job benefits, and paid training time.
22. I understand that some of my competitor LHCSAs may receive millions of dollars in extra funding next month through the NYSDOH's first directed payment.
23. This will mean that the eligible LHCSAs will recruit Silver Lining's employees and that Silver Lining will lose its direct care workers to those LHCSAs that received the additional funding and can offer better compensation and benefits packages.
24. Silver Lining will suffer irrevocable financial losses because it will not have the direct care workers to provide services to Silver Lining's clients.
25. This would not only negatively impact Silver Lining, but would negatively impact the patients with whom Silver Lining has built a relationship of trust and quality care.
26. If Silver Lining is no longer able to staff its cases, this will result in reputational damage and clients will no longer recommend Silver Lining for home care services. Silver Lining relied on those recommendations to grow its business in the past.
27. The additional funding for which Silver Lining is not currently eligible can also be used for technologies that increase employee satisfaction, such as technologies that enable aides to maximize care hours to achieve full-time work.
28. Silver Lining will be irreparably harmed because it will lose employees to competitors who are better equipped with the technology to ensure the employees more hours.

29. Again, Silver Lining will suffer irrevocable financial losses because it could no longer retain its employees and, without employees, ultimately could no longer provide services to its clients.
30. The Transform the Long-Term Care (LTC) Workforce and Achieve Value-Based Payment (VBP) Readiness proposal is supposed to allow eligible LHCSAs to develop “strategies to recruit and retain a racially and ethnically diverse and culturally competent workforce, with adequate levels of demographic and linguistic representation based on historical patient populations.”
31. As I stated, Silver Lining uniquely caters to a community of Holocaust survivors and refugees/immigrants from the former USSR and Eastern Europe because of its knowledge of the languages and culture. However, if other eligible LHCSAs received funding which will enable them to take my employees, Silver Lining could lose employees with the unique language abilities and cultural knowledge, thus negatively impacting Silver Lining’s ability to cater to its unique population of beneficiaries. This will negatively impact Silver Lining’s reputation and its business opportunities.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 18, 2022
Brooklyn, New York


Jacob Joffe